

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

HSIOU-KUANG LUH, M.D.
Certificate No. A-34977

No: 04-96-64179

Respondent

DECISION

The attached Stipulation for Surrender of License is hereby adopted by the Division of Medical Quality as its Decision in the above-entitled matter.

This Decision shall become effective on November 9, 1998.

IT IS SO ORDERED November 2, 1998.

By: _____

IRA LUBELL, M.D.

President

Division of Medical Quality

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 ANNIE FEATHERMAN,
Deputy Attorney General
3 State Bar No. 144662
Department of Justice
4 110 West A Street, Suite 1100
Post Office Box 85266
5 San Diego, CA 92186-5266
Telephone: (619) 645-2079
6
7 Attorneys for Complainant

8 **BEFORE THE**
9 **DIVISION OF MEDICAL QUALITY**
10 **MEDICAL BOARD OF CALIFORNIA**
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

11 In the Matter of the Accusation)
Against:) Case No. 04-96-64179
12)
13 **HSIOU-KUANG LUH**) **STIPULATION FOR SURRENDER**
11180 Warner Avenue, Suite 265) **OF LICENSE**
14 Fountain Valley, CA 92708)
15 Physician's and Surgeon's)
Certificate No. A 34977)
16 Respondent. _)

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the
19 parties to the above-entitled proceedings that the following
20 matters are true:

21 1. Complainant, Ron Joseph, is the Executive Director
22 of the Medical Board of California, Department of Consumer
23 Affairs ("Board") and is represented by Daniel E. Lungren,
24 Attorney General of the State of California by Annie Featherman,
25 Deputy Attorney General.

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1 2. Hsiou-Kuang Luh, M.D., is represented by Callahan,
2 McCune & Willis, LLP, by O. Brandt Caudill, Esq., 111 Fashion
3 Lane, Tustin, CA 92780-3397.

4 3. Respondent has received and read the Accusation
5 which is presently on file and pending in Case No. 04-96-64179
6 before the Division of Medical Quality of the Board ("Division"),
7 a copy of which is attached as Exhibit A and incorporated herein
8 by reference.

9 4. Respondent understands the nature of the charges
10 alleged in the Accusation and that, if proven at hearing, such
11 charges and allegations would constitute cause for imposing
12 discipline upon respondent's license issued by the Board.

13 5. Respondent is aware of each of his rights,
14 including the right to a hearing on the charges and allegations,
15 the right to confront and cross-examine witnesses who would
16 testify against respondent, the right to testify and present
17 evidence on his own behalf, as well as to the issuance of
18 subpoenas to compel the attendance of witnesses and the
19 production of documents, the right to contest the charges and
20 allegations, and other rights which are accorded respondent
21 pursuant to the California Administrative Procedure Act (Gov.
22 Code, § 11500 et seq.) and other applicable laws, including the
23 right to seek reconsideration, review by the superior court, and
24 appellate review.

25 6. Respondent freely and voluntarily waives each and
26 every one of the rights set forth in paragraph 5.

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1 7. For the purpose of resolving Accusation No. 04-96-
2 64179, respondent agrees that, at a hearing, complainant could
3 establish a factual basis for the charges in the Accusation.
4 Respondent hereby gives up his right to contest that cause for
5 discipline exists based on those charges and agrees to be bound
6 by the Division's disciplinary order as set forth below.

7 8. Respondent understands that by signing this
8 Stipulation he is enabling the Division to issue its order
9 accepting the surrender of his license without further process.
10 He understands and agrees that Board staff and counsel for
11 complainant may communicate directly with the Division regarding
12 this Stipulation, without notice to or participation by
13 respondent. The Division will not be disqualified from further
14 action in this matter by virtue of its consideration of this
15 Stipulation. In the event that this Stipulation is rejected for
16 any reason by the Division, it will be of no force or effect for
17 either party except for this paragraph.

18 9. Upon acceptance of this Stipulation by the
19 Division, respondent agrees to cause to be delivered to the
20 Division both his licenses and wallet certificate before the
21 effective date of the Decision. Respondent further understands
22 that, on or after the effective date of this Decision, he will no
23 longer be permitted to practice as a physician and surgeon in
24 California.

25 10. Respondent understands and agrees that if he ever
26 files an application for relicensure or reinstatement in the
27 State of California, the Division shall treat it as a petition

1 for reinstatement and respondent must comply with all laws,
2 regulations and procedures for reinstatement of a revoked license
3 in effect at the time the petition is filed. Further, respondent
4 understands that if he files an application for relicensure or
5 reinstatement, all of the charges and allegations contained in
6 Accusation No. 04-96-64179 will be deemed to be true, correct and
7 admitted by respondent when the Division determines whether to
8 grant or deny the petition.

9 11. Respondent understands and agrees that if he ever
10 files an application for relicensure or reinstatement, he will
11 reimburse the Division the amount of \$5,410.40.^{upm} as the costs of
12 investigation and prosecution of this matter. Unless otherwise
13 agreed by the Division, such reimbursement shall be paid in full
14 prior to the processing of the application for relicensure or
15 reinstatement.

16 12. All admissions and recitals contained in this
17 stipulation are made solely for the purpose of settlement in this
18 proceeding and for any other proceedings in which the Division or
19 other professional licensing agency is involved, and shall not be
20 admissible in any other criminal or civil proceedings.

21 13. The parties agree that facsimile copies of this
22 Stipulation, including facsimile signatures of the parties, may
23 be used in lieu of original documents and signatures. The
24 facsimile copies will have the same force and effect as
25 originals.

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DATED: Sept. 22, 1998

We concur in the Stipulation.

DATED: 9/28/54

O. Brandt Caudill
O. BRANDT CAUDILL, ESQ.

Attorneys for Respondent

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1 DATED: October 2, 1998.

2 DANIEL E. LUNGREN, Attorney General
3 of the State of California

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5 

6 ANNIE FEATHERMAN
7 Deputy Attorney General

8 Attorneys for Complainant

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EXHIBIT A

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 DANIEL J. TURNER,
Deputy Attorney General, State Bar No. 79560
3 Department of Justice
110 West A Street, Suite 1100
4 Post Office Box 85266
San Diego, California 92186-5266
5 Telephone: (619) 645-3037
6 Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO May 27 19 98
BY Yvonne L. M. [Signature] ANALYST

7
8 BEFORE THE
9 DIVISION OF MEDICAL QUALITY
10 MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

11 In the Matter of the Accusation) Case No. 04-96-64179
Against:)
12) FIRST AMENDED
HSIOU KUANG LUH, M.D.) ACCUSATION
13 11180 Warner Avenue, Suite 265)
Fountain Valley, California 92708)
14)
Physician's and Surgeon's)
15 Certificate No. A 34977,)
16 Respondent.)

17
18 Complainant Ron Joseph as cause for disciplinary action
19 alleges as follows:

20 PARTIES

21 1. Complainant, Ron Joseph, is the Executive Director
22 of the Medical Board of California (hereinafter the "Board") and
23 brings this accusation solely in his official capacity.

24 2. On or about March 3, 1980, Physician's and
25 Surgeon's Certificate No. A 34977 was issued by the Board to
26 Hsiou Kuang Luh, M.D. (hereinafter "respondent"), and at all
27 times relevant to the charges brought herein, this license has

been in full force and effect. Unless renewed, it will expire on August 31, 1999.

JURISDICTION

3. This accusation is brought before the Division of Medical Quality of the Board (hereinafter the "Division"), under the authority of the following sections of the California Business and Professions Code (hereinafter "Code"):

A. Code section 2227, which provides that the Division may revoke, suspend for a period not to exceed one year, or place on probation and order the payment of probation monitoring costs, the license of any licensee who has been found guilty under the Medical Practice Act.

B. Code section 2234, which provides that unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

1 "(f) Any action or conduct which would have warranted
2 the denial of a certificate.

3 ". . . ."

4 C. Code Section 125.3, which provides, in part,
5 that the Board may request the administrative law judge to
6 direct any licentiate found to have committed a violation or
7 violations of the licensing act, to pay the Board a sum not
8 to exceed the reasonable costs of the investigation and
9 enforcement of the case.

10 D. Code section 726, which provides, in
11 pertinent part, that the commission of any act of sexual
12 abuse, misconduct, or relations with a patient, client, or
13 customer constitutes unprofessional conduct and grounds for
14 disciplinary action for any person licensed under Division
15 2, Healing Arts, sections 500 and subsequent of the Code.

16 4. Section 16.01 of the 1997/1998 Budget Act of the
17 State of California provides, in pertinent part, that:

18 A. No funds appropriated by this act may be expended
19 to pay any Medi-Cal claim for any service performed by a
20 physician while that physician's license is under suspension
21 or revocation due to a disciplinary action of the Medical
22 Board of California; and,

23 B. No funds appropriated by this act may be expended
24 to pay any Medi-Cal claim for any surgical service or other
25 invasive procedure performed on any Medi-Cal beneficiary by
26 a physician if that physician has been placed on probation
27 due to a disciplinary action of the Medical Board of

California related to the performance of that specific service or procedure on any patient, except in any case where the board makes a determination during its disciplinary process that there exist compelling circumstances that warrant continued Medi-Cal reimbursement during the probationary period.

FIRST CAUSE FOR DISCIPLINE

(Sexual Abuse, Misconduct, or Relations With a Patient)

5. Respondent Hsiou Kuang Luh, M.D., is subject to disciplinary action on account of the following:

A. On or about September 18, 1991, Mrs. Wendy C. became the patient of respondent, an obstetrician and gynecologist. At that time, the patient was 30 years of age and had come to be treated by respondent for an increased vaginal discharge condition. The examination demonstrated a whitish mucous discharge. Respondent diagnosed cervical erosion and prescribed two medications: Terazol vaginal cream and Mycolog cream.

B. On or about November 8, 1991, the patient returned to the medical office of respondent, having had a positive HCG (pregnancy test) the previous week. Respondent recorded that the patient's last menstrual period date was October 2, 1991.

C. On or about July 3, 1992, Wendy C. gave birth to a male infant at the Los Alamitos Medical Center, with respondent the attending obstetrician.

D. The patient's initial post-partum visit to the office of respondent occurred on or about July 29, 1992. Respondent examined her and noted she was experiencing pain in the episiotomy wound, with some bleeding. Respondent removed sutures from the top portion of the episiotomy and instructed Wendy C. to return to his office in three weeks for another post-partum check.

E. On or about August 13, 1992, the patient returned as instructed. Respondent noted a normal involution of the uterus; that the episiotomy was well healed, but with some induration; a yellowish-pinking discharge, and cervical erosion. Respondent prescribed sitz baths, recommended maternity leave until September 11, 1992; and instructed her to return for a pap test in November. Although this is not noted in the office chart, on this visit the patient informed respondent she had been crying constantly and may be having "post-partum blues." Respondent told her she was stressed, exhausted, and in need of rest. The patient thanked respondent for taking care of her for the past 10 months, in response to which the respondent hugged her.

F. On or about one week after the August 13, 1992, visit, the patient returned to respondent's office seeking an extension of her state disability status. She repeated her belief that her post-partum depression and uncontrolled crying were not improving. Wendy C. asked respondent to refer her to a professional psychologist for

1 treatment of these feelings or to prescribe antidepressant
2 medication for her. At that point, respondent came to where
3 the patient was sitting, sat down beside her, took her right
4 hand, and kissed it. The patient was surprised and shocked.
5 She walked away from respondent, to the opposite side of his
6 desk. Respondent followed her, grasped her, turned her
7 around, and began kissing her. He told the patient he
8 missed her and was very sexually excited. She felt him rub
9 his penis against her. Respondent stated, "You don't have
10 postpartum blues, you just need to see your doctor every
11 day." He told her she did not need a psychologist.
12 Respondent prescribed Sinequan, an antidepressant medication
13 and dangerous drug, for her on that date. Respondent failed
14 to make any office chart notation of this visit or of the
15 drug he prescribed for Wendy C. at that time.

16 G. Following this visit, respondent telephoned
17 Wendy C. She told him she was not doing well and would
18 start crying. Within the first week, i.e., by on or about
19 the end of August 1992, respondent and Wendy C. had lunch
20 together at his invitation. Respondent reiterated his
21 opinion that she did not need to see a psychologist for her
22 depression and crying, -- that she just needed to see him
23 for this condition. Respondent convinced the patient he had
24 personal feelings for her; for her part, she was happy that
25 someone cared for her, loved her, and understood her. The
26 telephone calls, lunches, and other meetings became more
27

1 frequent, and in or about October of 1992, respondent and
2 Wendy C. had sexual relations for the first time.

3 H. The sexual affair between respondent and this
4 patient consisted of sexual intercourse, oral sex, and
5 telephone sex. These sexual relations occurred over a
6 continuous period commencing in or about October of 1992 and
7 not ending until mid-November of 1995.

8 I. The physician-patient relationship between
9 respondent and this patient consisted of periodic office
10 visits and examinations, writing of prescriptions for
11 medication for various conditions, and ordering of tests.
12 The physician-patient relationship coincided with their
13 sexual relationship over a continuous period commencing in
14 or about October of 1992 and not ending until about April of
15 1995 when respondent notified the patient he was terminating
16 the physician-patient relationship. Respondent and Wendy C.
17 continued a sexual relationship until on or about November
18 of 1995.

19 J. During the period of the
20 physician/patient/sexual relationship, ante, paragraphs G,
21 H, and I, respondent failed to refer Wendy C. to any other
22 obstetrician/gynecologist for care and treatment.

23 6. Respondent Hsiou Kuang Luh, M.D., is subject to
24 disciplinary action for unprofessional conduct in that he
25 committed acts of sexual abuse, misconduct, or relations with a
26 patient in connection with his care and treatment of Wendy C., in
27 violation of Code section 726, in that:

1 A. Complainant realleges Paragraph 5 above at
2 this point.

3
4 SECOND CAUSE FOR DISCIPLINE

5 (Gross Negligence)

6 7. Respondent Hsiou Kuang Luh, M.D., is subject to
7 disciplinary action for unprofessional conduct in that he was
8 grossly negligent in his care and treatment of Wendy C., in
9 violation of Code section 2234, subdivision (b), in that:

10 A. Complainant realleges Paragraph 5 above at
11 this point.

12 B. Respondent forcibly hugged Wendy C., forcibly
13 kissed her right hand; followed her behind his desk and
14 grasped her, turned her around, and began kissing her; told
15 the patient he missed her and was very sexually excited,
16 rubbed his penis against her, told her he loved her,
17 indicated to her that his affection for her, -- including
18 sexual intercourse, oral sex, and telephone sex, would be
19 effective in treating her depression, and in fact engaged in
20 sexual relations with this patient. These were acts of
21 clear sexual abuse of, and sexual misconduct and relations
22 with, a patient, in violation of Code section 726. These
23 were acts that constitute an extreme departure from the
24 standard of practice of medicine.

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PRAYER

WHEREFORE, the complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Division issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate No. A 34977, heretofore issued to respondent Hsiou Kuang Luh, M.D.;

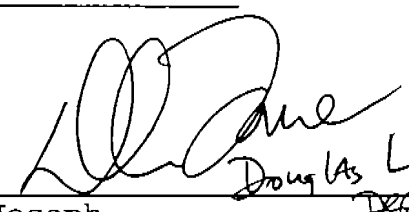
2. Revoking, suspending or denying approval of the respondent's authority to supervise physician's assistants, pursuant to Business and Professions Code section 3527;

3. Ordering respondent to pay the Board the actual and reasonable costs of the investigation and enforcement of this case;

4. If placed on probation, ordering respondent to pay the costs of probation monitoring;

5. Taking such other and further action as the Division deems necessary and proper.

DATED: May 27, 1998


Ron Joseph
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

03573160-SD97AD0922